2001

Salt Lake City Corporation v. Salt Lake County : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY CORPORATION, a Utah municipal corporation, E. J. GARN, JAMES L. BARKER, JR. STEPHEN M. HARMSEN, CONRAD B. HARRISON and JENNINGS PHILLIPS, JR.,

Plaintiffs-Appellants,

vs.

SALT LAKE COUNTY, a Utah body corporate and politic; GERALD R. HANSEN, Salt Lake County Auditor; RALPH McCLURE, Salt Lake County Commissioner; WILLIAM E. DUNN, Salt Lake County Commissioner; PETE KUTULAS, Salt Lake County Commissioner and SID LAMBOURNE, Salt Lake County Treasurer,

Defendants-Respondents.

Case No. 14304

BRIEF OF PLAINTIFFS-APPELLANTS

Appeal from an Order of the District Court of Salt Lake County, Utah
The Honorable Bryant H. Croft, Judge

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NATURE OF THE CASE

This is an appeal from a decision granting defendants-respondents' Motion to Dismiss plaintiffs-appellants' Complaint.

DISPOSITION IN LOWER COURT

The Third District Court dismissed the plaintiffs-appellant's Complaint before a joinder-of-issue. In so doing, the lower court held that Section 17-34-1, et seq., *Utah Code Ann.,* 1953, was not enforceable and could not be implemented by extraordinary writ. ithstanding the defendants-respondents' duties as specified in said Statute, the court neld it could not require county officials to impose a fee, tax or service charge on those persons living in unincorporated areas of the county, requiring them to pay for named

sevices presently financed from general county revenues. The court specifically read Art. XIII, §5 of the *Utah Constitution* to prohibit the State Legislature from conditioning a county's authorization to provide these municipal-type services upon assessment of a special fee or special tax arrangement. It held that such a condition imposed by the State Legislature was tantamount to compelling a county to incur a debt or levy a tax for a county purpose, without the county's consent.

Thus, in effect, the lower court held that the State Legislature's directive to help eliminate the inequity of "double taxation" against city residents, living in urbanized counties, was not enforceable by the court. The lower court held that a taxpayer's exclusive remedy was to pay taxes under protest and, thereafter, sue for recovery under the provisions of Sections 59-11-10 and 11, *Utah Code Ann.,* 1953.

RELIEF SOUGHT ON APPEAL

The plaintiffs-appellants, and each of them, seek to have this court reverse the lower court, with instructions sufficient to direct the lower court to issue an appropriate extraordinary writ, compelling county officials to implement the provisions of Section 17-34-1, et seq., *Utah Code Ann.,* 1953. In the alternative, the plaintiffs-appellants seek a reversal of the lower court with instructions sufficient with the lower court to order Salt Lake County to cease providing the statutorily defined municipal-type services, exclusively to county residents, or cease financing said services from the general county funds.

FACTS

The following facts are undisputed:

1. On or about September 25, 1973, the plaintiffs-appellants filed a Complaint with the Third District Court for the State of Utah. Salt Lake City filed as a party-plaintiff in its capacity as a municipal corporation of the State of Utah, located within defendant-respondent, Salt Lake County, a body politic and corporate of the State of Utah. The individual plaintiffs sued in their respective capacities as the elected Mayor and Commissioners of Salt Lake City; they also filed as residents and taxpayers of both Salt Lake City and Salt Lake County. (R. 97).

2. The aforesaid suit sought an extraordinary writ, to compel Salt Lake County and its elected officials to comply with Section 17-34-1, et seq., *Utah Code Ann.,* 1953. This statute was passed to remedy what is commonly known as "double taxation," which results when municipal residents are required, through county tax assessments, to finance services provided exclusively to residents of the unincorporated areas of the county. Under such an arrangement, city residents are taxed for city services; yet, they also pay a proportionate share for those same services provided, exclusively, to unincorporated area residents from general county funds.

The suit, thus, prayed for an appropriate order compelling the elected officials of Salt Lake County to implement the provisions of the aforesaid State statute. In the alternative, plaintiffs sought a Mandatory Injunction prohibiting the county from expending county general revenue funds to provide the services outlined in the aforesaid State statute, exclusively to county residents living in unincorporated areas; and for such other relief as the court deemed just and equitable in the premises. (R-97-101).

3. On or about October 9, 1973, the defendants filed a Motion to Dismiss plaintiffs-appellants' Complaint and asserted that:

(a) The plaintiff's Complaint failed to state a claim upon which relief could be granted.

(b) Salt Lake City was an improper party and lacked standing.

(c) Plaintiffs failed to join an indispensible party; to wit, the Utah State Tax Commission.

(d) The exclusive legal remedy available was to follow the provisions of Sections 59-11-10 and 11, *Utah Code Ann.,* 1953.

(e) The individual plaintiffs lacked standing to bring the action.

(f) The statute sought to be enforced was unconstitutional in that it allegedly violated Art. I, §24; Art. XIII, §§2, 3, and 5; Art XXVI §§26 and 29 of the *Constitution of the State of Utah.* (R-88-89).

4. Sundry memoranda were submitted by the parties and defendants-respondents' Motion to Dismiss came on regularly for hearing before the Honorable Judge Bryant H.

Croft. After receiving supplemental memoranda by both parties, Judge Croft dismissed the plaintiffs-appellants' Petition and Complaint on October 1, 1975, for reasons stated in his Memorandum Decision dated August 28, 2975. (R-6-17)

ARGUMENT

POINT I

SECTIONS 17-34-1, ET SEQ., UTAH CODE ANN., 1953, IS CONSTITUTIONAL AND THE PROPER SUBJECT OF AN EXTRAORDINARY WRIT TO COMPEL: (1) ITS IMPLEMENTATION BY COUNTY OFFICIALS, OR (2) THAT THE COUNTY CEASE PROVIDING TO UNINCORPORATED AREAS THE DEFINED MUNICIPAL SERVICES FINANCED FROM GENERAL REVENUE FUNDS, WHICH SERVICES ARE NOT PROVIDED TO ALL COUNTY RESIDENTS AND TAXPAYERS AS A WHOLE.

A. THE COURT SHOULD GIVE THE LEGISLATIVE ACT THE PRESUMPTION OF VALIDITY AND INTERPRET THE STATUTE TO EFFECTUATE THE LEGISLATIVE INTENT.

Inasmuch as no answer has ever been filed to plaintiffs-appellants' Complaint and the defendants-respondents have merely filed a Motion to Dismiss, all of the allegations in the Complaint must, for appeal purposes, be accepted as true on their face. Further, these facts must be viewed in a light most favorable to the plaintiffs-appellants, the parties against whom the Motion to Dismiss was directed. *Kidman v. White,* 15 Ut.2d 142, 378 P.2d 898 (1963).

When the facts alleged are so viewed (and as a matter of actual fact) Salt Lake County and its elected officials have refused and continue to refuse to implement the provisions of Section 17-34-1, et seq., *Utah Code Ann.,* 1953. They continue to provide the municipal-type services named in that statute, exclusively to residents of the county living in unincorporated areas, and to finance the same from general county revenue funds. Further, said county officials have indicated by words and actions, including the defense of this case, that they will continue to refuse to implement the provisions of this State law. The county has never sought a Declaratory Judgement concerning its validity, but has simply ignored the law until the within action was brought, despite requests for implementation.

In 1971, the Utah State Legislature passed an Act entitled "Municipal-type Services to Unincorporated Areas," which act reads in full as follows:

> "Sec. 17-34-1. Purpose of act. The purpose of this act is to allow counties of the first and second class to furnish municipal-type services and functions to areas of the county outside the incorporated towns or cities and defray the cost by levying taxes on taxable property in the county outside the limits of incorporated towns or cities or by charging a service charge or fee to persons benefiting from the services and functions.
>
> "Sec. 17-34-2. Types of services. Counties of the first and second class may provide to the areas of the county outside the limits of any incorporated towns or cities the following municipal-type services and functions without providing the same services to incorporated towns or cities: fire protection, waste and garbage collection and disposal, planning and zoning, and street lighting.
>
> "Sec. 17-34-3. Taxes or service charges. *Whenever a county of the first or second class shall undertake to furnish the municipal-type services and functions described in section 17-34-2 of this act to areas of the county outside the limits of incorporated towns or cities, the entire cost of the services and functions so furnished shall be defrayed from funds that the county has derived from either (1) taxes the county may levy upon the taxable property in the county situated outside the limits of incorporated towns or cities which are benefited by the services or functions, or (2) service charges or fees the county may impose upon the persons benefited by the services and functions, or (3) a combination of these sources.* As the taxes or service charges or fees are levied and collected, they shall be placed in a special revenue fund of the county and shall be disbursed only for the rendering of services set forth in section 17-34-2 within the unincorporated areas of the county.
>
> *For the purpose of levying said taxes upon the benefited property, the county commission may divide the county into taxing districts.* (emphasis added)
>
> "Sec. 17-34-4. Contracts under Interlocal Co-operation Act. This act shall not be construed to prevent counties, cities and towns from entering into contracts covering the furnishing by one to the other of all or any of the municipal functions and services listed in section 17-34-2 of this act under the provisions of the Interlocal Co-operation Act, except that where incorporated cities or towns perform one or more of the municipal services set forth in section 17-34-2 for unincorporated areas of a county, payment shall be made from the special revenue fund."

Clearly, the intent of the Legislature in adopting this law was to avoid the inequity of double taxation which has long plagued city residents in urbanized counties of the State of Utah. Under the former scheme, county governments with their county-wide taxing power, raised revenue for county services from all county residents; however, such services were discriminatorily provided, from those general revenues, to residents of the unincorporated areas of the county. Therefore, the Legislature recognized the different character of highly

urbanized versus more rural-oriented counties and directed that counties in the "first" and "second" class could provide the municipal-type services of "fire protection," "waste and garbage collection and disposal," "planning and zoning" and "street lighting" services *exclusively* to unincorporated areas. However, the Legislature fairly commanded that, if those services were provided, they were to be financed solely by those persons using them.

The defendants-respondents have argued that the designation and application of the statute to counties of the "first" or "second" class is irrelevant, meaningless, and unconstitutional. However, the court's attention is drawn to Section 17-16-13, *Utah Code Ann.,* 1953. This section specifically classifies counties by assessed valuation. It states:

> "For the purpose of regulating the compensation and salaries of all county officers . . . the counties of this state are classified according to assessed valuation of the several counties, as follows:
>
> "First class, all counties having an assessed valuation of $150,000,000 or more.
>
> "Second class, all counties having an assessed valuation of $35,000,000 or more and less than $150,000,000.
>
> " * * * "

Although this statute speaks of limiting the above classification of salary matters, it is interesting that in 1969 the Legislature repealed the State legislated pay schedule for county officials by county classification, and merely provided that they would be paid by salaries fixed by the appropriate Board of County Commissioners. See, Section 17-16-14, *Utah Code Ann.,* 1953. Importantly, they did not repeal the classification section, evidencing the Legislature's intent that the county classification was to have a broader application than mere salary schedules.

When the Legislature passed the double taxation statute found in Title 17, Chapter 34 in 1971 and referred to "first" and "second" class counties, they obviously intended those words to have meaning. *Met. Waters District v. Salt Lake City, et al.,* 14 Ut.2d 171, 380 P.2d 721 (1963). Certainly, Chapter 16 can and should be read in light of Chapter 34 of Title 17 to give that county classification language meaning and, thus, implement the intent of the Legislature. *Park and Recreation Comm. v. Dept. of Finance,* 15 Ut.2d 110, 388 P.2d 233 (1964); *Western Beverage Co. of Provo, Utah, v. Hansen, et ux.,* 98 Ut. 332, 96

P.2d 1105 (1939). Alternatively, the court should implement the intent of the Legislature by interpreting that county classification language to mean those counties which have in them cities of the First or Second class. Cf. Section 10-1-1, *Utah Code Ann.,* 1953.

Under any reading of the statute, Defendants-respondents, Salt Lake County, falls within the regulatory provisions of Section 17-34-1, et seq., *Utah Code Ann.,* 1953, and this court should so hold.

B. UTAH CONSTITUTIONAL PROVISIONS REQUIRING UNIFORM STATE TAXATION AND UNIFORM OPERATION OF LAWS, AND PROHIBITING PRIVATE OR SPECIAL LAWS ARE PROHIBITIONS AGAINST UNREASONABLE OR ARBITRARY CLASSIFICATIONS BY THE LEGISLATURE. CHAPTER 34 OF TITLE 17 OF OUR CODE IS NOT SUCH AN UNREASONABLE CLASSIFICATION OF COUNTIES AND IS CONSTITUTIONAL.

This court has previously had the opportunity to rule on county classification and has upheld the validity of statutes which distinguish permissible taxation and authorized governmental services on the basis of reasonable county classifications. For example, in the case of *Salt Lake County V. Salt Lake City,* this court upheld the validity of a statute requiring counties of the State, having in them cities of the First or Second class, to establish detention centers and to pay for the care of children residing in them. After quoting the Utah Constitutional prohibition against "special laws" and citing other constitutional provisions dealing with the assessment and collection of taxes and regulating county affairs, identical to those asserted as a defense in this action by defendants-appellants, this court said of the challenged statute:

> " . . . we confess our entire inability to see upon what ground any part of the law can be said to be violative of anything said or necessarily implied in the section of the Constitution first quoted above . . . . True, the law imposes some duties upon the county commissioners of Salt Lake County and some burdens upon the taxpayers of Salt Lake City, the most populous city in the state, that are not imposed upon the county commissioners or taxpayers of San Juan, . . . *The differences produced are entirely due to the difference in density of population and matters incidental thereto . . . The state government, in the discharge of its functions, may, however, classify the counties and cities of the state, and may, for the purpose of augmenting the public good and welfare, treat both counties and cities as state agencies, and may even impose additional duties upon their officers or additional burdens upon the residents and taxpayers, and especially so when the latter have a special as well as a general interest in the thing the state is seeking to effectuate for the public good. Salt Lake County v. Salt Lake City,* 42 Ut. 548, 134 P.560, 563 (1913) (emphasis added)

In the above case, like the one before the bar, the law imposed duties on only a few counties of the State; further, the law required local government to tax the cost of the service to be provided to the taxpayers who benefited from them. This law was upheld in all respects against a challenge that it was unconstitutional. In reaching its decision, the court correctly observed that deference should be given the Legislative prerogatives and specifically directed Utah courts to be cautious and circumspect in reviewing laws which classify counties; it stated:

> "Moreover, it often happens that a developing and growing commonwealth like the state of Utah is compelled to have recourse to temporary expedients *to meet the emergencies arising in different counties of the state when such conditions are in a progressive but different state of development. Courts, therefore, should be very slow and cautious in interfering with the state in its attempts to exercise its sovereign powers and in discharging its duties, . . .* " *Salt Lake County v. Salt Lake City,* 42 Ut.548, 134 P.565 (1913) (emphasis added)

Concerning the Legislative classification, the court has limited its power to review classifications to those situations where the lawmakers were arbitrary or patently unreasonable; it has stated:

> "In order to see whether the excluded classes or transactions are on a different basis than those included, we must look at the purpose of the act. The objects and purposes of a law present the touchstone for determining proper and improper classification.
>
> "It is only where some persons or transactions excluded from the operation of the law are as to the subject matter of the law in no differentiable class from those included in its operation that the law is discriminatory in the sense of being arbitrary and unconstitutional . . . " *State v. J. B. and R. E. Walker, Inc.,* 116 P.2d 766 at page 769, citing *State v. Mason,* 78 P.2d 920, 923, 924.

The court further noted:

> "Before a court can interfere with the legislative judgment, it must be able to say that there is no fair reason for the law that would not require with equal force its extension to others which it leaves untouched." *State v. J. B. and R. E. Walker, Inc.,* id., at p. 769, citing 12 *Am. Jur.,* §521, p. 217.

The commentators have also acknowledged this point; Antieau has observed:

> "A classification is not automatically invalid under these clauses [State Constitution prohibitions against 'special laws'] because there is only one county in the class. Classification by population will survive under general principles: *If the classification is reasonable considering the purpose of the legislation, it will not be invalidated as a special law.* The same can be said of geographical classification. By the better view, legislation is not 'special' because its advantages and opportunities are determined by local option and only a single county has chosen to avail itself of the benefits.

> " . . . Some courts treat these clauses [constitutional provisions requiring 'uniform operation' of law] as only synonymous with the constitutional demand for general laws—that is, bans upon special legislation where there is no rational basis for differentiation. However, it is suggested that a law can apply to a general class of counties within the state (such as all bordering upon another state) without being of uniform operation." Antieau, *Local Government Law—County Law,* (Vol. 4) §31.04 at p. 16. (citations omitted; emphasis added).

Thus, it is respectfully submitted that the classification of counties as established by the Legislature in Chapter 34 of Title 17 of our code is entirely reasonable and should be so held by the court. This point is underscored by the fact that plaintiffs-appellants have had no opportunity to present evidence to show factually that the Legislature's classification, in Section 17-34-1 et seq., *Utah Code Ann.,* 1953, are reasonable. If not reasonable as a matter of law under the presumptions that the Legislature classification is valid, most certainly the plaintiffs-appellants should have the right to establish that question factually.

In addition to the foregoing, it is important to note that a reasonable classification of taxpayers is not volative of Art. XIII, §3 of the *Utah Constitution* requiring "uniform taxation" within the State. That clause only requires uniform taxation within reasonably classed counties. This constitutional provision provides:

> "The Legislature shall provide by law a uniform and equal rate of assessment and taxation of all tangible property in the state . . . " *Utah Constitution,* Art. XIII, §3.

The State, by statute, has long provided that tax assessment will vary from county to county, depending upon the assessed valuation of property in a given county jurisdiction. For example, Utah law provides maximum rates of taxation shall be:

> "(1) Sixteen mills per assessed dollar valuation in all counties with a total assessed valuation of more than $20,000,000 and
>
> "(2) Eighteen mills per assessed dollar valuation in all counties with a total assessed valuation of less than $20,000,000. See Section 59-9-6.2, *Utah Code Ann.,* 1953.

This classification of counties has never been challenged as being "unequal taxation."

Further, other courts considering this question have consistently ruled that similar constitutional provisions merely require uniform taxation within reasonably classified jurisdictions. For example, an excellently reasoned and written opinion is the case of *District 50 Metropolitan Recreation Dist. v. Burnside,* 448 P.2d 778 (Colo. 1968). In this

case, our sister State, Colorado, was faced with a challenge to state taxing statute which excluded certain property from taxation, within a recreational taxation district. Like the case before the bar, the challengers asserted that failure to tax all property uniformly within the taxing district violated Colorado's constitutional provision which required "uniform taxation." The Colorado Supreme Court correctly observed:

> "Under the 'uniformity of taxation' clause of the state constitution, as well as the 'due process of law" and the 'equal protection of the law' provisions relied on by the plaintiffs, *the legislature is not prohibited from defining 'various classes of real and personal property,' which may be taxed for a specific purpose. The uniformity which is required is that all persons who are members of any class, or all property logically belonging in a given classification, shall receive equal treatment to that accorded all other persons or property in the same class.* Any 'classification' of persons or property must not be unreasonable or arbitrary, and must have sanction in reason and logic.
>
> " . . .
>
> "The controlling question in the instant case is whether the 'classification' of property belonging to the nineteen defendants by which it was excluded from taxation for recreation purposes, is ' . . . reasonable and not arbitrary and which is based upon *substantial differences having a reasonable relation to the objects or persons dealt with and to the public purpose sought to be achieved by the legislation involved.' "* (Authorities omitted) *District 50 Metropolitan Recreation Dist. b. Burnside,* 448 P.2d 778 (Colo. 1968) (emphasis added)

This point was also noted by the Wisconsin court in interpreting its constitutional provision on Uniform Taxation; it stated;

> " . . . *a valid classification does not violate the principal of uniformity."* *Williams v. City of Madison,* 113 N.W.2d 395, 402 (Wis. 1962) (emphasis added)

Regarding "classification," cases are legion which hold that the Legislature has the broadest discretion in establishing tax classifications. It is in the challenger to prove the classification unreasonable, unnatural or arbitrary. See, *City of Pa. v. Smith,* 194 A.2d 177, 178 (Pa. 1963); *Keyes v. Chambers,* 307 P.2d 498, 509 (Or. 1975); *Geo. Byers Sons, Inc. v. Metzger,* 172 N.E.2d 723, 725 (Ohio 1960); *State v. J. B. and R. E. Walker, Inc.,* id. Further, statutes are presumed valid and constitutional; a statute cannot be declared unconstitutional, unless it is found to be so beyond a reasonable doubt. *Broadbent v. Gibson,* 105 Ut. 53, 140 P.2d 939 (1943); *Branch v. Salt Lake County Service Area No. 2 Cottonwood Heights,* 23 Ut.2d 181, 460 P.2d 814 (1969); *State v. Tritt,* 23 Ut.2d 365, 463 P.2d 806 (1970).

Thus, it is respectfully submitted that based on the presumption of constitutionality of statutes and the broad discretion of legislatures to classify taxpayers, the questioned statute is not unconstitutional as a matter of law. However, even if the court has some doubt concerning this issue, the question of reasonable classification is one of fact. Certainly, the court cannot rule the legislative classification defective, as urged by defendants-respondents' motion, in the face of the strong presumptions to the contrary, without a factual hearing.

It is respectfully submitted that this particular piece of legislation is constitutional in all regards. It does not violate Art. I, §24 (Uniform Operation of Laws); Art. XIII, §2 or 3 (Uniform State Taxation) or Art. VI, §26 (Private or Special Laws) as suggested by defendants- respondants.

C. THE LOWER COURT ERRED WHEN IT CONCLUDED THAT THE ONLY LEGALLY PERMISSABLE WAY TO IMPLEMENT CHAPTER 34 OF TITLE 17 OF OUR CODE WAS BY THE CREATION OF A SPECIAL TAXING DISTRICT AND, FURTHER, THAT THE COURT COULD NOT ORDER COMPLIANCE WITH THE LAW IN THAT SUCH A DIRECTIVE WOULD BE COMPELLING THE COUNTIES TO LEVY A TAX, WITHOUT THEIR CONSENT IN VIOLATION OF ART. XIII §5 OF THE UTAH CONSTITUTION.

COUNTIES ARE POLITICAL SUBDIVISIONS OF THE STATE AND HAVE ONLY THOSE POWERS AND DUTIES GIVEN TO THEM. THE STATUTE GRANTS ENABLING POWER FOR THE COUNTIES TO PROVIDE MUNICIPAL-TYPE SERVICES, BUT IMPOSES A CONDITION PRECEDENT THAT IF A COUNTY DOES PROVIDE THE NAMED SERVICES, IT MUST ADOPT ONE OF THE ALTERNATELY NAMED METHODS OF FINANCING THOSE SERVICES, SO THAT THEY ARE PAID BY THOSE TAXPAYERS RECEIVING THE BENEFITS THEREFROM. THIS CONDITIONAL GRANT OF ENABLING POWER IS VALID AND ENFORCEABLE BY COURT ORDER.

The lower court declined to rule on the basic constitutionality of the statute; rather, it chose to base its decision, with regards to this issue, on the recent constitutional amendment to Art. XIV, §8, *Constitution of Utah.* The lower court in its Memorandum Decision stated: "The challenge of defendants (defendants-respondents) seems to have been rendered moot by the addition of Art. XIV of New Section 8 by a constitutional amendment which was adopted by the people of the State of Utah and became effective January 1, 1975." *Memorandum Decision,* at p. 4. (R-10, 11) This constitutional provision provides as follows:

> "The legislature by general law may authorize any county, city, or town to establish special districts within all or any part of the county, city, or town to be governed by the governing authority of the county, city, or town with power to provide water, sewerage drainage, flood control, garbage, hospital, transporta-

> tion, recreation, and fire protection services or any combination of these services and may authorize the county, city, or town: (1) to levy upon the taxable property in only such districts for the purpose of acquiring, constructing, equipping, operating, and maintaining facilities required for any or all of these services, and (2) to issue bonds of these districts for the purpose of acquiring, constructing, and equipping any of these facilities without regard to the limitations of Sections 3 and 4 of this Article XIV but subject to such limitation on the aggregate amount of these bonds which may be outstanding at any one time as may be provided by law; but the authority to levy taxes upon the taxable property in these districts and to issue bonds of these districts payable from taxes levied on the taxable property in them shall be conditioned upon the assent of a majority of the qualified electors of the district voting in an election for this purpose to be held as provided by law. Any such district created by a county or municipalities but only with the consent of the governing authorities thereof. *Laws in effect at the time of the adoption of these laws shall not be affected by the adoption of this section."* Art. XIV, §8, *Constitution of Utah,* ratified and made effective January 1, 1975. (emphasis added)

The lower court then reasoned that because this constitutional provision permitted the creation of special taxing districts with the consent of the people within the district, the plaintiffs-appellants' petition and Complaint to require the county to implement its provisions must be dismissed. Significantly, the lower court completely ignored the fact that the statute was constitutional, without resorting to the 1975 Constitutional Amendment above quoted. Further, he grafted a condition precedent on the statute to the effect that the law could not be implemented without the assent of the electors of a special improvement district. He stated:

> "In my opinion this constitutional provisions makes necessary the dismissal of plaintiffs' complaint because the authority to levy taxes upon the taxable property within the district to be benefited by the constitutionally authorized services 'shall' be conditioned upon the assent of a majority of the qualified electors of the district involved voting in an election for this purpose to be held as provided by law." "Memorandum Decision" at p. 5; (R-11)

Thereafter, the lower court, made a questionable step in logic to conclude that Art. XIII, §5 of the *Utah Constitution* barred the courts from compelling a creation of a special taxing district. The court reached its holding by citing the 1901 case of *Wright v. Stanford,* 24 Ut. 148, 66 P. 1061. In this case the Legislature required the hiring of a certain fixed number of fruit inspectors for counties based on the number of fruit trees located in the county, with compensation to be paid by the county. The court held that this law violated the principles of uniform county government, uniform application of the laws, and the prohibition against special laws. Further, the 1901 court volunteered that it violated the

principle of local self-government by imposing taxes for a local purpose. That case is poorly reasoned, not in point, and is probably repealed by the latter and better reasoned case of *Salt Lake County v. Salt Lake City,* above discussed in some detail.

However, even if the *Wright v. Stanford* case was not tacitly overruled, its facts are very distinguishable from the case before the bar. The statute now under consideration does not require counties to employ anyone; further, it does not require any services to be rendered. Rather, the law is permissive and enabling in nature; that is, it grants enabling power to the counties to provide services that are more properly and traditionally provided by municipal corporations. The law does require, however, that if the named services are provided exclusively to unincorporated areas, those benefiting therefrom shall pay the cost. Obviously, it imposes no tax or mandatory obligation on any county. Thus, even if the *Wright v. Stanford* case cited is still Utah law, its rationale is not applicable to these facts.

More importantly, however, it appears that the lower court simply ignored the well-established principle that political subdivisions of the State are mere appendages of the State and derive their power from Legislative acts. They serve at the express will and direction of the State and, with few exceptions under the Constitution, they have no rights other than those expressly granted them by the Legislature. Further, those powers and rights which are granted by the Legislature can be amended, modified or revoked at its will. This position is clearly stated in McQuillin, as follows:

> "It is a political subdivision of the state and generally a creature of the legislature. It is variously described as an arm of the state, a miniature state, an instrumentality of the state, a mere creature of the state, an agency of the state, and the like. It has been variously stated that a municipal corporation is a political subdivision of the state excercises a portion of the state's sovereignty or powers, . . . It has also been declared that a municipal corporation is not itself sovereign." McQuillin, *Municipal Corporation,* §2.08 at p. 142, 143 (Rev. Vol. 1971).

McQuillin also notes:

> *"In the absence of any restriction in the constitution, express or implied, the general legal doctrine supported by an unbroken line of authorities, is that political powers conferred upon municipal corporations for local government are not vested rights as against the state, and the legislature has absolute power to change, modify or destroy them at pleasure.* Judge Sharswood, in an early Pennsylvania case, said that a municipal corporation is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of

> government—essentially a revocable agency—having no vested right to any of its powers or franchises . . . . The sovereign may continue its corporate existence, and yet assume or resume the appointments of all its officers and agents into its own hands; for the power which can create and destroy can modify and change.' " 2 McQuillin, *Municipal Corporations,* §4.05, at p. 15-18 (Rev. Vol. 1966.) (emphasis added)

Of course, there are exceptions to the aforestated general rule where express rights of existence and powers have been preserved by superior constitutional law. However, Utah has clearly adopted this rule in a long line of cases holding that political subdivisions of the State are appendages of the State, and have only those powers expressly conferred or those necessarily implied from powers so conferred upon them by the Legislature. This so-called *Dillon* rule has been noted as follows:

> "The powers of the city are strictly limited to those necessarily granted, to those necessarily or fairly implied in or incident to the powers expressly granted, and to those essential to the declared objects and purposes of the corporation, settled law in this state." *Stevenson v. Salt Lake City Corporation,* 7 Ut. 2d 28, 317 P.2d 597, 598 (1957) and cases therein cited. For applicability of this rule to counties, see *Cottonwood City Electors the proposed town v. Salt Lake Board of Commissioners,* 28 Ut.2d 121, 499 P.2d 270 (1972).

The County has acknowledged its subservient role as a political subdivision of the State. In a recently filed brief dealing with the relative relationships of city and county governments, the county correctly stated as follows:

> " . . . A county is a political subdivision of the State . . . . It exists not by virtue of its own will or consent, but as a result of the superimposed will of the state." Brief filed in *Salt Lake City v. Salt Lake County,* Third District Case No. 230816, citing Antieau, *Local Government Law, County Law,* (vol. 4) §31.00 at pp. 4 and 5 and quoting *State v. Schinz,* 216 N.W. 509 (Wis. 1927); See also, *Constitution of Utah,* Art. XI Section 1.

It has also been poignantly observed:

> " *'Counties are agencies of the State, and in the exercise of ordinary governmental functions, unless directed or restrained by a constitutional provision or provisions, are, for all practical purposes, subject to the unlimited control of the Legislature.'* Accordingly, counties have no rights or immunities against the states unless so provided in the state constitution." Antieau, *Local Government Law, County Law,* (vol. 4) §31.04 at p. 12. (Citations omitted; emphasis added)

There exists no constitutional provision guaranteeing to counties the power to provide the municipal-type services enumerated in the statute under discussion. Such powers are permissive and were delegated to the county under the express condition that general tax

revenues collected from municipal residents are not to be used to finance services provided exclusively to residents of unincorporated areas. The counties were given the option to provide these exclusive services, provided that such were financed by imposition of a service fee, the creation of a service improvement district, or some combination of both. Counties were, further, provided methods of eliminating the inequity of double taxation by either terminating service or entering into interlocal co-operation agreements.

With this plethora of alternatives, and certainly with the clear expression of legislative intent, the county is under an obligation to implement one of the options available to it. Arrogantly, however, Salt Lake County has simply ignored the law. It did not seek any Declaratory Judgment as to the validity of this law and did not, in any particular or under any option, attempt to implement provisions. Rather, it simply continued with the inequitable status quo, until the within action was commenced.

Significantly, it is also important to note that charges for services are not "taxes" or "assessments." See, *Murray City v. Board of Education of Murray School District,* 16 U.2d 115, 396 P.2d 628 (1964). In this case, the court upheld a charge to pay for sewer services against a tax exempt entity. This court held that the charges were for "services" and were not "taxes" subject to the school board's tax exempt status. Therefore, unquestionably county officials can comply with the legislative will by the imposition of service charges or fees, without the necessity of creating a special service district as required by the lower court decision.

In addition, it is important to note that the constitutional amendment itself specifically contains a caveat preserving the validity of prior existing legislation; it states:

> "Laws in effect at the time of the adoption of these laws shall not be affected by the adoption of this section."

Whether the language "these laws" refers to the constitutional amendment itself or "general laws" passed pursuant to its provisions, is not important. The Legislature did make clear that pre-existing statutory law was not voided or affected by the passage of the amendment.

Thus, Chapter 34 of Title 17 under consideration and passed in 1971 was not

invalidated by the constitutional amendment made effective in 1975. As previously stated in Point I supra, that law is constitutional by its own right. Therefore, it is respectfully submitted that the statute in question is constitutional without relying on the 1975 amendment to the *Utah Constitution*. It can be implemented by the designated counties, without creating a special taxing district.

It is, further, submitted that the lower court was patently in error in holding that it lacked the power to compel compliance with this clear legislative directive, through the implementation of one of the options available to the county officials. The law does not impose a tax for county purposes. Rather, consistent with a long line of cases and authorities, the Legislature merely enacted enabling legislation by amending the previous powers given to counties. The law now simply provides various options by which the services authorized can be financed in an equitable fashion, fairly treating all county taxpayers. As such, compliance should be ordered by the court.

D. IF THE COURT DOES NOT FORCE COUNTY COMPLIANCE WITH CHAPTER 34 OF TITLE 17 OF OUR CODE, IT WILL CODIFY THE ILLEGAL EXPENDITURE OF GENERAL TAX REVENUES, COLLECTED FOR COUNTY-WIDE SERVICE, TO BENEFIT A DEFACTO SERVICE AREA LOCATED IN UNINCORPORATED SALT LAKE COUNTY; THUS, THE COUNTY WILL IMPROPERLY CONTINUE COLLECTING TAXES IN ONE SERVICE DISTRICT TO BENEFIT ANOTHER.

The avoidance of double taxation and the requirement that county residents, exclusively receiving the benefit of services, pay for them, is not only fair, but required. This court has correctly observed:

> "A state purpose must be accomplished by state taxation, a county purpose by county taxation, or a public purpose for any inferior district, by taxation of such district. This is not only just, *but essential.*" *Bromley v. Reynolds,* 2 Ut 525 at p 530 quoting Cooley on Taxation at p 105 (4th Ed.) §316, p 663.

This position is also stated as follows:

> "A state cannot tax itself for the benefit of the people of another state. So, imposing tax on one municipality or part of the state for the purpose of benefiting another municipality or part, violates the rule as to uniformity. No taxing district can be taxed with exclusive benefit of another district." Cited in *Peterson v. Hancock,* 53 NW2d 85 (Neb 1952).

American Jurisprudence states the principle as follows:

> "It is not sufficient that a tax be levied for a public use; it must be levied for the use of the public of the district taxed . . . "
>
> " . . . It is clear that one taxing district, whether state, county, municipality, or district established for the peculiar purpose, cannot be taxed for the benefit of another district. One state cannot raise money by taxation to be expended for the benefit of the people of another state. Moreover, the people of the particular municipality cannot be taxed for a public purpose entering equally to the benefit of the people of the whole state, and a municipal corporation cannot be compelled to turn over a portion of its fund to the county in which it is situated in order to pay the expenses of a county function. Nor can the people of one municipality be taxed for the benefit of the people of another municipality . . . " 51 *Am. Jur.,* Taxation, §402 cited in *Tennant v. Sinclair Oil and Gas co.,* 355 P.2d 887, (Wyo. 1960).

Thus, the State Legislative action to correct the inequity of the State taxing system by requiring the county to levy special assessments for certain municipal functions provided by the county, exclusively to residents of unincorporated areas, is not only a reasonable classification, but one required by the constitution.

The county is presently collecting a county-wide tax on the premise that it is for county services; however, in point of fact substantial sums of general revenue funds are expended to provide municipal services to a defacto service area, comprised of the unincorporated areas of Salt Lake County. Salt Lake County is taxing city residents through county property taxes to subsidize services exclusively provided to a separate defacto municipal corporation. This fact was recently admitted by the county attorney in a newspaper interview wherein he reportedly referred to the county as a large municipality. That observation is, of course, correct. The net result is double taxation for city residents when they pay for their own municipal services and, in addition, have their county elected servants again tax them to subsidize unincorporated municipal service areas, where the political power resists the demands of uniformity and fair play.

It is submitted that as a matter of law, the statute before the court demands implementation under fundamental principles of uniform taxation and equal protection. However, at a minimum, the plaintiffs-appellants are entitled to demonstrate factually the basis of their claim of double taxation, and the fact that they are being taxed in one district (a city) for the benefit of another service area (the unincorporated county).

POINT II

SECTIONS 59-11-10 AND 11 UTAH CODE ANN. 1953, ARE NOT APPLICABLE TO THE WITHIN ACTION, AND DO NOT CREATE A FAST, SPEEDY OR ADEQUATE REMEDY AT LAW TO BAR THE ISSUANCE OF AN EXTRA-ORDINARY WRIT, COMPELLING IMPLEMENTATION OF THE DOUBLE TAXATION STATUTE.

The defendants-appellants and the lower court have taken the position that Sections 59-11-10 and 11, *Utah Code Ann.,* 1953, provide an adequate remedy at law for any aggrieved taxpayer, including the plaintiffs-appellants in this case. Thus, they argue that no equitable relief and no extraordinary relief under Rule 65B of the Utah Rules of Civil Procedure is possible. These sections of State law provide as follows:

> *"No injunction shall be granted by any court or judge to restrain the collection of any tax or any part thereof,* nor to restrain the sale of any property for the nonpayment of the tax, except where the tax, or some part thereof sought to be enjoined, is illegal, or is not authorized by law, or the property is exempt from taxation. If the payment of a part of a tax is sought to be enjoined, the other part must be paid or tendered before action can be commenced." 59-11-10, *Utah Code Ann.,* 1953. (emphasis added)

> *"In all cases of levy of taxes, licenses, or other demands for public revenue which is deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced such party may pay under protest such tax or license,* or any part thereof deemed unlawful, to the officers designated and authorized by law to collect the same; and thereupon the party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom said tax or license was paid, or against the state, county, municipality or other taxing unit on whose behalf the same was collected, to recover said tax or license or any portion thereof paid under protest." 59-11-11, *Utah Code Ann.,* 1953. (emphasis added)

Importantly, there has been no allegation and no request that any injunction issue "restraining the collection of any tax" or to "restrain the sale of any property." The taxes levied by the county do not exceed the dollar limitations imposed on the county under State law. Further, it is the position and allegation of plaintiffs-appellants that the present county avoidance of following the directives of Chapter 34 of Title 17 is illegal. The plaintiffs-appellants, in this action, seek to require the defendants-respondents to impose a fee or special tax to pay for specific services enumerated in State law, in a method consistent with the law. Alternatively, the county should cease providing those services exclusively to residents of the county living in unincorporated areas.

The plaintiffs-appellants fully understand that a court order requiring county compliance with the law will not necessarily guarantee a reduction of taxes; further, it will not completely eliminate the problem of double taxation. Such compliance with the law will, however, go a long way in avoiding the double taxation problem and, hopefully, it will ultimately result in the county: (a) Legally spending general tax revenues on services that benefit all county taxpayers; or (b) Decreasing the general tax levy to the actual cost of providing general county services, without subsidy to the unincorporated suburbs for municipal services provided by cities to their residents at extra tax charges.

The problem before the court and the legislature is that county general fund tax revenues are spent for the exclusive benefit of county taxpayers living outside of incorporated areas, to the prejudice of county residents living in and paying taxes to a municipal corporation. It is the manifest unfairness of the expenditure of county general fund revenues, not the county tax assessment, which the Legislature attempted to correct by the law sought to be implemented in this suit. The above-quoted statutes in Title 59, Chapter 11 have nothing to do with how tax revenues are spent. Thus, those statutes, on their face, are not applicable to the within fact situation. Further, these laws cited by the lower court and the defendants-respondents, own its terms, permits injunctive relief where a tax is "illegal, or not authorized by law." Sections 59-11-10, *Utah Code Ann.,* 1953. Thus, the Sections cited are not applicable to these facts before the court.

Also, even if those sections were somehow read to be applicable to this fact situation, the law further gives the court discretion to use its injunctive remedies in unusual cases. The law provides:

> *"The remedy hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses* alleged to be unlawfully levied or demanded, except in unusual cases where the remedy hereby provided is deemed by the court to be inadequate." 59-11-14, *Utah Code Ann.,* 1953. (emphasis added)

This court specifically held that this section should be read in light of Section 59-11-10 and stated:

> "This section is to be read in connection with Section 59-11-10, U.C.A. 1953, which is as follows: (Omitting quote; see quote supra at p. 18." *Baker v. Tax Comm.,* 520 P.2d 203, 205 (Ut. 1974)

The court then noted that a case where the county tax assessor made unilateral assessments on property theretofore exempt, was an "unusual case" permitting injunctive relief. Likewise, it is respectfully submitted that wholesale disregard of a Utah statute by a county of the State of Utah and its elected officials, is or should be "unusual." As such, the court can and should compel compliance with the law by injunction or appropriate extraordinary writ.

Thus, it is respectfully submitted that Sections 59-11-10 and 11, *Utah Code Ann.,* 1953, are not applicable to this case; further, it is no adequate remedy for a city taxpayer to pay a county tax under protest and then sue for recovery as his individual assessments are unquestionably valid. It is the method of expenditure contrary to statute which is questioned and that problem is peculiarly one subject of compelled court compliance. Rule 65B of the Utah Rules of Civil Procedure grants the court the power to enter appropriate relief where no plain, speedy or adequate legal remedy exists, and:

> "(3) Where the relief sought is to compel any inferior tribunal, or any corporation, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; . . . " Rule 65B (3) Utah Rules of Civil Procedure.

It is respectfully submitted that an appropriate ruling upholding the constitutionality of Chapter 34 of Title 17, with instructions to the lower court requiring implementation of the law should be made, in remanding this matter for further proceedings.

POINT III

SALT LAKE CITY IS A PROPER PARTY-PLAINTIFF AND HAS STANDING TO BRING THE WITHIN ACTION.

The lower court correctly observed that the individually named plaintiffs-appellants, as individuals and as taxpayers of Salt Lake City and Salt Lake County, were proper parties-plaintiff and have standing to bring the within action. However, the lower court also held that Salt Lake City lacked standing to be a party-plaintiff. With that latter ruling, the plaintiff-appellant Salt Lake City, respectfully takes exception.

The question of standing is essentially one to insure that the parties have a sufficient personal stake in the outcome of the litigation to insure a true adversary proceeding. This

point was succinctly stated by the United States Supreme Court as follows:

> "Finally, the concept of standing is a necessarily flexible one, designed principally to insure that the plaintiff have 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions . . . ' " See concurring opinion of Justice Brennen in *Doremus v. Board of Education,* 342 U.S. 429, citing *Baker v. Carr,* 369 U.S. 186, 204 (1962).

Obviously (and without serious dispute) the individual plaintiffs-appellants have standing to bring the suit. However, Salt Lake City also is vitally interested in the outcome of this litigation. The result of this suit can have significant impact on taxes that may be available for its use and services which may be available to its residents.

Of course, the City was denied the opportunity to present evidence on this point because it was summarily dismissed by the lower court before a joinder-of-issue. However, the State law specifically grants standing to individuals who may be affected by the construction of a Statute; it provides:

> "Any person . . . whose right, status or other legal relations *are affected by a statute* . . . may have determined any question of construction or validity arising under the instrument, statute . . . and obtain a declaration of right, status or other legal relationships thereunder." 78-33-2 *Utah Code Ann.,* 1953. (emphasis added)

The rate of taxation in the county is going to have a direct relationship to the taxes which the city may, practically, ask the citizens of Salt Lake City to bear. Also, implementation of the Double Taxation Statute may result in consolidation of services through interlocal co-operation agreements or annexations to cities, who are in reality designed by the Constitution and State law to provide municipal services. The writer can assure the court that there are few statutes with which the city is more vitally interested and which potentially will have greater affect on the city, than the one under consideration. Urban blight and the flow of the tax base into unincorporated areas, because of lower property taxes is a matter of vital concern to Salt Lake City.

Of course, the city's position in this case, on one hand, does raise the question of permitting one to claim "standing" to vindicate the rights that may, arguably, more directly affect an individual taxpayer. Standing under somewhat similar situations has been granted on several occasions. For example, the United States Supreme Court permitted a plaintiff to

assert the rights of parents of school children in defending his own property rights. *Piercy v. Society of Sister,* 268 U.S. 510 (1925). More recently the Supreme Court permitted the NAACP to assert rights of its members; it stated that the NAACP: " . . . argues more appropriately the rights of its members, . . . and its nexus with them is sufficient to permit that it act as their representatives before this court." *NAACP v. Ala ex rel Patterson,* 357 U.S. 449 (1958); See also, Sedler, "Standing to Assert Constitutional Juris Tertii in the Supreme Court," 71 *Yale L.J.* 599 (1962).

It is respectfully submitted that Salt Lake City has sufficient interest in the outcome of this action to guarantee a proper presentation of the issues. It is personally and vitally interested and affected by the outcome of the litigation. Further, it is the type of action where the city can and should represent the taxpayer's interest. However, the resolution of this issue is not determinative of the law suit; unquestionably, the individually named plaintiffs-appellants have standing to bring the action and obtain the relief requested.

CONCLUSION

Section 17-34-1, *Utah Code Ann.,* 1953, was an attempt by the Utah Legislature to solve some of the problems stemming from "double taxation." This inequitable taxation results when uranized counties provide essentially all of the services provided by municipal corporations, from their general tax revenues exclusively to persons residing in unincorporated areas. The law justly provides that these counties (identified as those in the first and second class) may provide the municipal-type services, exclusively to residents living in unincorporated areas; however, they must devise a system of fees or special taxing districts to finance the cost from the persons receiving the benefits.

The counties affected have the option of providing these funds in a number of ways. These alternate methods include special fees or assessments for the services, the creation of special taxing districts, negotiating interlocal co-operation agreements to provide the services for all residents in the county (either through cities or county governmental entities), or ceasing to provide the services altogether. The latter remedy is probably unacceptable, but could have the salutary effect of requiring urbanized unincorporated

areas to become incorporated and thus receive municipal services from political entities which have been specifically designed to provide them.

The county of Salt Lake has ignored the statutory mandate of the State Legislature. It has made no effort whatsoever to implement the provisions of this law or to challenge its validity, except to defend the within litigation. This action merely seeks equitable relief, compelling the implementation of the State Statute. It is respectfully submitted that this relief should be granted, with sufficient instructions for the lower court to frame an appropriate writ or order compelling compliance with the legislative mandate, in one of the options available under law. As such, this court should reverse the lower court's dismissal of plaintiffs-appellants' complaint and remand the case with appropriate instructions.

Respectfully submitted,

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